

## CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Santosh Prakash	Team: Squad #8	CCRB Case #: 201800068	<input checked="" type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Saturday, 12/30/2017 11:30 PM	Location of Incident: § 87(2)(b)	Precinct: 25	18 Mo. SOL 6/30/2019	EO SOL 6/30/2019	
Date/Time CV Reported Sun, 12/31/2017 6:43 PM	CV Reported At: CCRB	How CV Reported: Call Processing System	Date/Time Received at CCRB Sun, 12/31/2017 6:43 PM		

Complainant/Victim	Type	Home Address
§ 87(2)(b)	§ 87(2)(b)	§ 87(2)(b)

Witness(es)	Home Address
§ 87(2)(b)	§ 87(2)(b)

Subject Officer(s)	Shield	TaxID	Command
1. POM Justin Senese	21424	959978	025 PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POM Keith Wagenhauser	18817	960062	025 PCT

Officer(s)	Allegation	Investigator Recommendation
A.POM Justin Senese	Abuse: Police Officer Justin Senese entered § 87(2)(b)	§ 87(2)(b)
B.POM Justin Senese	Force: Police Officer Justin Senese used physical force against § 87(2)(b)	§ 87(2)(b)

## Case Summary

§ 87(2)(b) filed the present complaint with the CCRB on December 31, 2017.

On December 30, 2017, at about 11:30 pm, PO Justin Senese (of the 25<sup>th</sup> Precinct) forcibly entered the residence of § 87(2)(b) located at § 87(2)(b) in Manhattan, pushing § 87(2)(b) in the process. **(Allegation A: Abuse of Authority – Premises Entered: § 87(2)(g)).**  
**Allegation B: Physical Force: § 87(2)(g)).**

The incident did not result in a summons or arrest and there is no relevant video footage.

## Findings and Recommendations

**Allegation A: Police Officer Justin Senese entered § 87(2)(b):**

**Allegation B: Police Officer Justin Senese used physical force against § 87(2)(b)**

§ 87(2)(g)

§ 87(2)(b) lives in a single-room occupancy (SRO) unit in a multi-dwelling apartment building located at § 87(2)(b). § 87(2)(b)

While classified as an SRO, every unit in the building is a separate private dwelling, individually leased to and for the exclusive use of each tenant. However, residents are expected to abide by their leasing agreement's house rules, including a visitor policy that states that guests must leave the premises by 11:00 pm, or face removal by security staff. (BR01)

On the night of December 30, 2017, § 87(2)(b) wife § 87(2)(b) who lives elsewhere, had overstayed the visitor curfew, the two having dozed off in the unit. At approximately 11:30 pm, § 87(2)(b) was woken by loud banging at the door. § 87(2)(b) immediately got up, opened the door and found two uniformed officers in the hallway, with a security guard behind them. Without introduction, PO Senese told § 87(2)(b) that he was in violation of house rules and that he had to enter the apartment to conduct a search. § 87(2)(b) responded by refusing to grant him access without a warrant, and asked him if he had one. PO Senese repeated again that he "had to come in." Telling PO Senese that § 87(2)(b) was inside getting dressed, § 87(2)(b) informed him again – without raising his voice and without making any physical movement – that he would not let him enter the unit. (BR01)

At this point, PO Senese had started to inch forward in the hallway, moving closer and closer to the doorway. To block his path into the unit, § 87(2)(b) thus stepped forward and onto the threshold of the doorway. But when § 87(2)(b) did so, PO Senese suddenly pushed him square on the chest with both of his hands with such "tremendous force" that he was "knocked" off his feet and moved several feet backwards, causing him to hit a rear wall and fall to the ground. Saying nothing, PO Senese then entered, looked around the space briefly and exited the unit, allowing § 87(2)(b) to exit by herself. (BR01)

§ 87(2)(b) who only provided a phone statement about the incident, was largely consistent with § 87(2)(b) but stated that the push caused him to fall backwards on to a bed and then to the floor. (BR02)

§ 87(2)(b) visited § 87(2)(b) the day after the incident; he complained of back pain and stated that he was pushed by a police officer, and that he hit his back against a radiator. No bruising was noted. (BR03)

PO Senese testified that he and PO Wagenhauser arrived at § 87(2)(b) at about 11:30 pm, responding to a reported trespasser at the building. Having been called there in the past for domestic incidents and other disputes, PO Senese and PO Wagenhauser first went to security staff at the front desk, and quickly learned they had called 911 to effect the removal of § 87(2)(b) s guest – that § 87(2)(b) was not authorized to stay past the building’s 11:00 pm curfew, rendering her a trespasser. Security never suggested that § 87(2)(b) or § 87(2)(b) were causing any noise or nuisance. PO Senese and PO Wagenhauser proceeded to go to unit # § 87(2)(b) with one of the security guards. Once at the door, PO Senese – with PO Wagenhauser and the guard behind him – knocked and announced himself as police. But when § 87(2)(b) opened the door, PO Senese asked him if anyone was with him inside, § 87(2)(b) said no, that his guest had left. PO Senese thus informed § 87(2)(b) that he believed the guest was still inside, and asked § 87(2)(b) if the officers could come in to check for themselves. § 87(2)(b) flatly refused to allow the officers to enter, despite PO Senese’s multiple requests. (BR04)

To remove the trespasser, PO Senese thus decided to enter the apartment over § 87(2)(b) objections, as follows: asking § 87(2)(b) to move aside, he stepped into the apartment, crossing the threshold of the doorway; when he did so, § 87(2)(b) stepped forward and placed his hand on PO Senese’s chest, attempting to “hold [him] back” and stop him from entering. In response, PO Senese pushed § 87(2)(b) into the apartment with one hand, causing him to stumble several feet backwards and then fall to the floor, possibly on his side. PO Senese said that he pushed § 87(2)(b) to create distance, since § 87(2)(b) had just gotten physical with him, stating: “He placed his hand on me which was enough to make me feel uncomfortable” and that “he got close to me – so I pushed him back.” PO Senese also said § 87(2)(b) was “irate” and “yelling” at him at the time but did not recall what he was saying and could not articulate anything else notable about the dynamic. PO Senese did not recall § 87(2)(b) hitting a rear wall or any other objects either before or during his fall and did not notice any injuries on § 87(2)(b) thereafter. While § 87(2)(b) told the officers that he would be suing them, PO Senese did not hear him complain of any injuries. As § 87(2)(b) fell, PO Senese entered the unit, quickly discovered § 87(2)(b) hiding in a corner, and escorted her off the premises. (BR04)

PO Wagenhauser’s account of the entry was consistent with the above. (BR05)

In addition to standard tenancy provisions on keys/locks, rent payment, notice of process, and public area use, the Veteran’s Residence leasing agreement also stipulates that the 11:00 pm guest curfew is a “substantial obligation.” Police contact is only referenced in a clause regarding unlawfully dangerous or hazardous conduct. (BR06)

Absent an emergency or exigent circumstances, police officers are prohibited from making a warrantless and nonconsensual entry into a suspect's home in order to make an arrest. (Payton v New York, 445 U.S. 573 [1979]; BR07) Exigency depends on the presence of factors including: the gravity or violent nature of the suspected crime, whether the suspect is believed to be armed, a likelihood that the suspect is about to escape, and “the peaceful circumstances of the entry.” (People v McBride, 14 N.Y.3d 440 [2010]; BR08) An emergency is one where officers must entry to protect life or property in imminent danger. (People v Theodore, 114 AD3d 814 [2d Dept 2014]; BR09)

§ 87(2)(g)

§ 87(2)(g)

#### **Civilian and Officer CCRB Histories**

- § 87(2)(b) has not been a party to any prior CCRB complaints.
- PO Senese has been a member of service for 2 years: he has been a subject in one other CCRB complaint (physical force allegation), closed as complainant unavailable; § 87(2)(g)

#### **Mediation, Civil and Criminal Histories**

§ 87(2)(b) rejected mediation. Notice of claim results are pending. § 87(2)(b) § 87(2)(c)

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Squad No.: 08

Investigator: \_\_\_\_\_  
Signature Print Title & Name Date

Squad Leader: \_\_\_\_\_  
Signature Print Title & Name Date